

*Trial is the
Default*
Courtroom Tips
and Strategies
from the Delta to
Desoto





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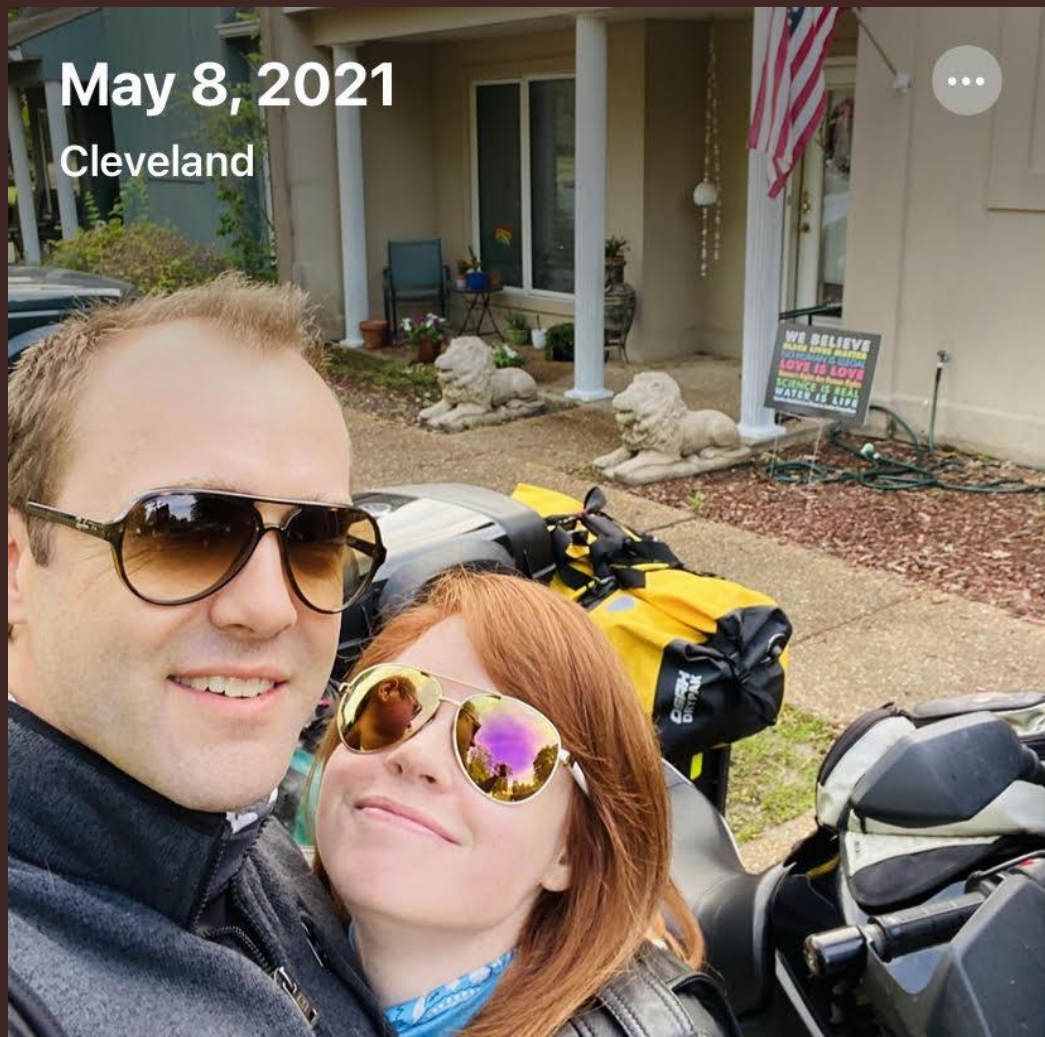
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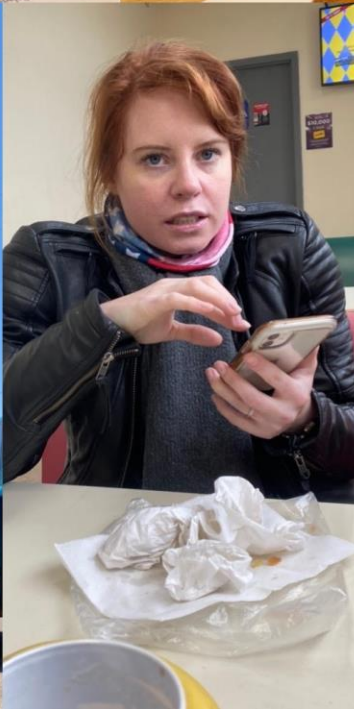
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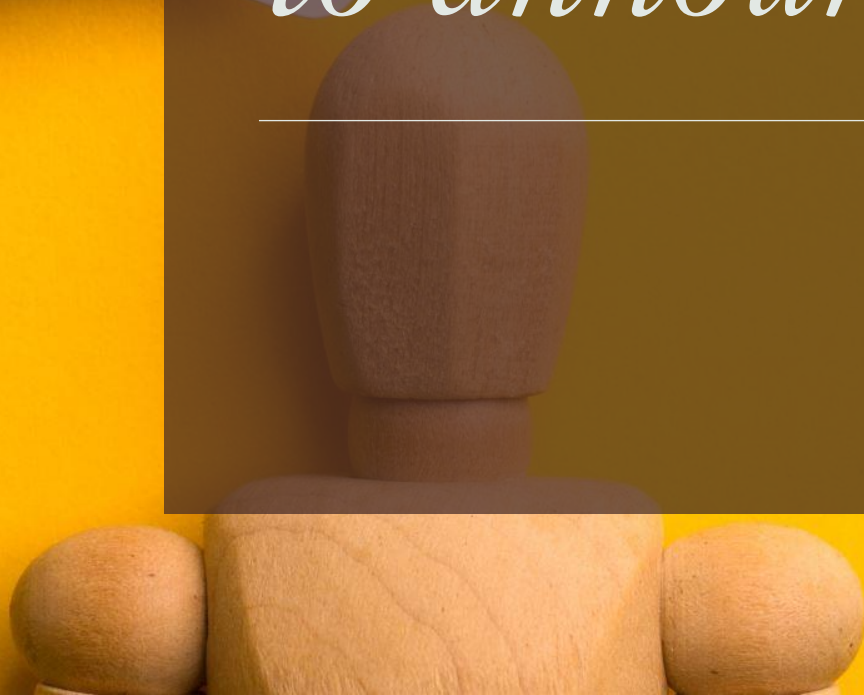






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*How do you know when
to announce trial?*



*Preparing
the Trial
Notebook:
sections for
the
following*

Opening Statement

Voir Dire

Anticipated State Witnesses – Cross Exam questions w/ exhibits to introduce per witness – pre-marked

Anticipated motion for directed verdict with case citations

Defense Witnesses with direct questions and exhibits to introduce per witness pre-marked

DO NOT PRE-DRAFT CLOSE

Jury Instructions with citations

A red wooden pin stands on the left, and four yellow wooden pins stand in a row on the right, all on a wooden surface. A semi-transparent dark grey rectangle covers the right side of the image, containing the text.

Jury Instructions: DO THEM FIRST

THIS WILL FORM YOUR THEORY OF THE CASE

Voir Dire: Who to pick

- Spend time prior to trial thinking of what type juror you want – depends on your client and type of case
- You do not want 12 Alpha Jurors. 2 Shepherds and 10 Sheep are fine
- Jurors can come to the same conclusion with vastly different reasoning
- Looks at addresses; employment/education; age; dress; gender; race; attentiveness

Voir Dire: What to ask

- Has anyone heard about the incident through social media? – ask judge to bring back for individual voir dire
- Is anyone is related to anyone else on the jury?
- Does anyone have children by anyone else in the jury pool?
- An indictment is not evidence – if you had to vote now, you must vote not guilty.
- Establish lack of duty to prove innocence – I can sit over here and play solitaire because the state has the burden of proof.
- Client does not have to testify – you cannot hold that against him
- Cake/Ingredient analogy – State has to prove all elements beyond a reasonable doubt
- Listen to State Voir Dire – burden shift – Cheetos analogy for circumstantial evidence/CSI argument to lighten the burden of proof.
- Guns/Drugs/Mental Health/CAP/Victim of Crime/Served BF and Verdict

Opening Statement:

01

Roadmap as to what you believe evidence will show

02

When to defer opening statement? – If so, notify judge before.

03

Only do so when you are going to call witnesses in your case in chief

04

State v. Devin Smith

Cross Exam

- Pre-trial prep - Map out points to establish with each witness
- Identify any documents to introduce and mark and have them ready – do not fumble in courtroom
- **LISTEN TO DIRECT EXAM** – cannot script cross exam – jury is watching you
- Do not fish – if you cannot establish any points that help your client, do not ask any questions – never ask a question you don't know the answer to
- Because you told jury some witnesses testimony “is not relevant” you are not going to ask any questions – so if you go this route, and don't ask any questions – it triggers to the jury that all the testimony they just heard was not relevant and thus forgettable

Cross Exam

- Recommend do not cross openly hostile witnesses – i.e. victim's immediate family member/mother/grandmother etc. Do not appear to beat up on a vulnerable person – sometimes don't even cross the victim himself/herself – Shirley Jones
- Example: Burglary case – no need to cross the victim to go over yet again all the things they lost and how violated they feel that their house got broken into. Unless they can ID your client, you express sympathy it happened and move on.

Crossing LEO - depends on jurisdiction

- Ask to speak to them before; phone call; follow up via letter on office letterhead
- If LEO does not respond – use it against them – have letters ready for refresh recollection if do not remember you asked for interview
- Save letters and address in cross exam
- LEO are there to do justice. Not convict. If they are instructed by superior not to talk to you, point that out.
- If instructed not to talk to you by DA, point that out. Then point to the DA in front of the Jury.
- Jurors do not like an unfair fight

Bernadette Logan
Chief of Investigation
Tunica County Sheriff's Department
Via Fax: 662.363.2593

RE: Cortez Wilkins – Shooting Victim – Fourth Request for Meeting

Dear Chief Logan:

I represent Cortez Wilkins, who was shot in Tunica County on December 24, 2021. It is my understanding that no arrests have been made in connection with my client being shot. Enclosed, please find three letters to Investigator Fabian Jones requesting that he meet with my client to discuss the facts and circumstances of the case, as well as collect evidence that is here in Tunica County, and interview multiple witnesses whom we have obtained contact information.

In a Bond Hearing on Mr. Wilkins's murder charge, which is also pending, Judge Webster asked if Tunica County had responded to any of my previous two letters requesting an investigation into the actual shooting of Mr. Wilkins. I responded that Tunica County has not. I've also faxed a third unanswered letter. Now I am contacting you.

Please contact me upon receipt of this letter so that we can coordinate on delivering the evidence and testimony that we have gathered regarding my client being shot. We have been attempting to organize this meeting since the beginning of January 2022.

Thank you for your attention to this matter.

Sincerely,

Michael S. Carr

April 20, 2022

Bernadette Logan
Chief of Investigation
Tunica County Sheriff's Department
Via Fax: 662.363.2593

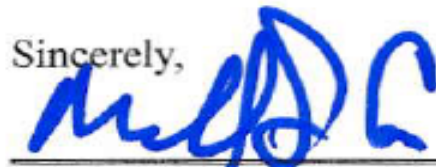
RE: Cortez Wilkins – Shooting Victim – Removal of Bullet from Mr. Wilkin's Body

Dear Ms. Logan:

Late last week, I received information from my client, Cortez Wilkins, that the bullet has been removed from his body from when he was shot on December 24, 2021. My client is in possession of said bullet, and if the Tunica County Sheriff's Department is interested in investigating who shot him, he will be glad to turn over the bullet removed from his body to an investigator from your department. I believe matching a bullet to a gun would be very helpful to your efforts to arrest this shooter, which I am sure you are making every effort to investigate. Mr. He will hold on to the bullet until you contact him via my office at 662-441-1529. To reiterate my last several letters to you, he is also willing to sit down and discuss the shooting when you or an investigator from your department can make time.

Thank you for your attention to this matter.

Sincerely,



Michael S. Carr

Directed Verdict

- State must have made a prima facia case as to each element of the offense
- Legal research and public record research are key here
- *State v. Chester Fleming* – getaway driver cannot be charged with embezzlement along with store employees during mock robbery
- *State v. Kimberly Turner* – must establish chain of custody on blood draw from hospital to LEO to Forensics Lab
- *State v. Deandra King* – must establish “willfully” – accidental shooting does not qualify
- *State v. Timothy Baker* – alleged victim must actually own property – check land records/car tag records

Direct Exam of Witnesses



WHO WHAT WHEN
WHERE HOW
QUESTIONS
SHOW THEM
COURTROOM



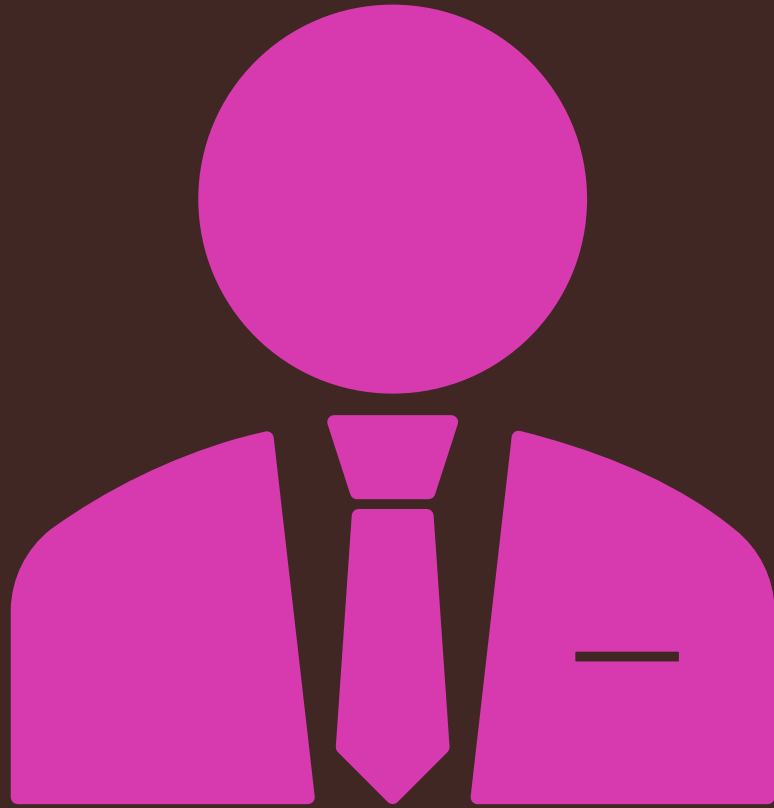
SPEND TIME
WITH YOUR
WITNESSES TO
PREPARE THEM;
IF A WITNESS
CANNOT
ANTICIPATE A
QUESTION
FROM THE
STATE, THAT'S
YOUR FAULT.



TELL WITNESS
HOW TO DRESS,
HOW TO
RESPOND,
MANNERISMS,
HOW TO BE
RELATABLE TO
JURY



KEEP THEM AS
CALM AS
POSSIBLE – THIS
COMES THROUGH
WITNESS
PREPARATION
WHERE YOU PLAY
PROSECUTOR



When Should Your Client Testify?

SELF
DEFENSE

ACCIDENT

Closing Argument

Cannot be scripted

Must be based off the evidence from the witness stand

Have separate legal pad to make points for closing argument (and for appeal)

Often attack LEO, DA, and overcharging

Often attack mens rea element – particularly “willfully” in AA/shooting cases and “deliberate design” in murder cases

Hardest thing for State to prove is what your client was thinking

Offer alternative charge in closing argument: State v. Recardo Frasier; State v. James Collins; State v. Devin Smith

Use copies of JI and physically highlight elements State cannot prove – concede where necessary

JURY INSTRUCTIONS WIN CASES

Jury instructions should be one of the first things you do in trial prep

Will tell you where the State's weakest points are

And what State has to establish

JURY INSTRUCTIONN NO. _____

The defendant DEVIN SMITH is charged by indictment with the crime of First Degree Murder with an Elderly Enhancement.

If you find from the evidence in this case beyond a reasonable doubt that:

1. the defendant DEVIN SMITH, within the First Judicial District of Bolivar County, Mississippi, did unlawfully, willfully and feloniously, with deliberate design to effect death, kill James Smith, Jr. by hitting and/or chopping the leg(s), arm(s) and about the head of James Smith, Jr. on November 30, 20218 with a cane and hatchet or axe,
2. and not in necessary self-defense
3. resulting in the death of James Smith, Jr. on December 28, 2018,

then you shall find the defendant DEVIN SMITH guilty of First Degree Murder.

If the State has failed to prove any one or more of the above elements beyond a reasonable doubt then you shall find the defendant DEVIN SMITH not guilty.

JURY INSTRUCTION NO. _____

When a wound from which death might ensue has been inflicted with murderous intent and has been followed by death, the burden of proof is on the accused to show that death did not result from such wound, but from some other cause.

JURY INSTRUCTION NO. _____

There is a presumption in the law that the defendant is sane. The burden is on the defendant to introduce evidence that creates a reasonable doubt as to his sanity at the time of the crime. However, once the defendant has created a reasonable doubt as to the defendant's sanity, the State has the burden to present sufficient evidence to prove beyond a reasonable doubt that the defendant was sane.

In order to prove that the defendant was sane at the time he committed the act of First Degree Murder, the State must prove beyond a reasonable doubt that the defendant knew the nature of his act and knew that it was wrong. If after considering all of the evidence in this case, you find that the State did not prove beyond a reasonable doubt that the defendant was sane at the time he committed the act of First Degree Murder, then you shall find the defendant not guilty of First Degree Murder by reason of insanity.

JURY INSTRUCTION NO. _____

The Court instructs the jury that “deliberate design” as it is used in these instructions, means an intent to kill without authority of law, and not being legally justifiable, or legally excusable. “Deliberate” always indicates full awareness of what one is doing, and generally implies careful and unhurried consideration of the consequences. “Design” means to calculate, plan, or contemplate. “Deliberate design” to kill a person may be formed very quickly, and perhaps only moments before the act of killing the person. However, a “deliberate design” cannot be formed at the very moment of the fatal act.

*Courtroom
Tools and
Methodology:
Act Like
You've Been
There Before*

- Chalkboard/White Board
- Projector
- Relationship with client
- Evidence As Props
- Use entire courtroom
- Stage/actor/lines/script/props/project/not back to audience
- Balance humor with seriousness

PRESERVE POINTS FOR APPEAL

This is what your
separate notepad
is for



Also helps to have
assistant/back up
counsel to make
notes on this



Decide look/need
for having second
counsel at table vs
sitting off to side

MPDA IS HERE TO HELP YOU

- Use the listserv – pick up the phone – there are no dumb questions
- If you are going into a new circuit/jurisdiction – contact a local defense lawyer to help with local practice
- We are all working to make each other better
- Now Go Win! And tell us how you did it!!